

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Titan Concrete Industries, Inc.)
Personal Property Account No. P-001745) Shelby County
Tax year 2003)

INITIAL DECISION AND ORDER

Statement of the Case

This is a direct appeal to the State Board of Equalization ("State Board") pursuant to Tenn. Code Ann. section 67-1-1005(b) from the following back assessment/reassessment of the subject property:

Original Assessment	Revised Assessment	Back Assessment/ Reassessment
\$209,250	\$360,810	\$151,560

The undersigned administrative judge conducted a hearing of this matter on August 23, 2006 in Memphis. The appellant Titan Concrete Industries, Inc. ("TCI"), a subsidiary of Texas-based US Concrete, was represented by corporate officer Cesar Rod Monroy. Assistant Shelby County Attorney Thomas Williams, Director of Finance Gwendolyn Cranshaw, CPA, and Audit Manager Eric Beaupre, CPA appeared on behalf of the Shelby County Assessor of Property.

The Assessor's representatives moved to dismiss TCI's appeal on the ground that it was untimely.

Findings of Fact and Conclusions of Law

TCI, whose administrative offices are located at 3860 Forest Hill Irene Road in Memphis, operates a ready mix plant at 2141 East Person Street in the Bluff City. In tax year 2003, pursuant to Tenn. Code Ann. section 67-5-903, the company timely filed with the Assessor's office a list of the tangible personal property used (or held for use) at these business locations. Based on the information furnished on the schedule, the Assessor made a "regular assessment" on such property.

This account was randomly selected for an audit covering tax years 2002 and 2003. On July 8, 2004, following completion of the audit, the Assessor certified a back assessment/reassessment in the amount shown above. That same day, in accordance with Tenn. Code Ann. section 67-1-1005(b), the Assessor's office sent a copy of the certification to TCI's correct address (Suite 500, 2925 Briarpark, Houston, TX 77042). This document informed

the company of its right of appeal directly to the State Board within 60 days from the date of mailing.

The State Board received TCI's appeal on September 21, 2004.¹ In a letter (dated September 16, 2004) which accompanied the appeal form, Mary Beth Racca, CPA – the company's in-house tax consultant at that time² – stated that:

This office had not received the official certification letter dated...July 8, 2004. **We had been forwarded a copy of the corrected notice for 2003 dated July 19, 2004...and believed that we had until September 19, 2004 to file the appeal.** We only received the certification letters earlier this week upon discussing the account with the county assessor's office. They were faxed to me on September 13, 2004.

We respectfully request that the appeal be considered even though technically after the 60 day period. We had contacted the auditor and audit manager last spring and had been waiting for several months to receive the notices. **Unfortunately they must have been misplaced at our location**, but in any event, never made their way to our accounting office in North Texas or here to the corporate headquarters. [Emphasis added.]

A copy of the "corrected (property tax) notice" presumably referred to by Ms. Racca in her letter is attached to this initial order.

At the hearing, the parties agreed that the equalized value of the subject property on the January 1, 2003 assessment date was \$1,028,200. The only issue, then, is whether the State Board has the requisite jurisdiction to adopt the stipulated value.

Tenn. Code Ann. section 67-1-1005(b) provides (in relevant part) that "[a]ny person aggrieved by a back assessment or reassessment may appeal directly to the state board of equalization within sixty (60) days from the date that a copy of the certification is sent to the taxpayer...."

Recently, in Homelife Oxygen, LLC (Shelby County, Tax Year 2001, Final Decision and Order, February 7, 2006), a taxpayer belatedly appealed a back assessment/reassessment that was made by the assessor upon the discovery of a step-up in basis of the property in question. Acting *sua sponte*, Administrative Judge Mark J. Minsky dismissed the appeal. The Assessment Appeals Commission upheld his ruling on the following rationale:

The taxpayer argued...that jurisdiction was waived by the failure of the assessor to object at the initial hearing before the administrative judge. In the alternative, the taxpayer requested the Board to take equitable jurisdiction. For the reasons expressed by the administrative judge in his initial decision and order, we find the parties cannot waive or confer jurisdiction, that the appeal was indeed filed late under established rules for calculation of time, and that **the Board does not have equitable power to ignore the deadlines to appeal.** The Board has been advised of the general principles regarding its jurisdiction in an

¹The appeal form was signed by Mr. Monroy on September 16, 2004.

²Ms. Racca left this position in early 2005.

opinion of the state Attorney General (OAG 92-62). [Emphasis added.]

Id. at p. 2.

Particularly given this result in a case where the assessor did not even file a motion to dismiss, the administrative cannot conclude that TCI's appeal is properly before the State Board. Even if this agency had the equitable power to waive the statutory deadline, the exercise of such authority would not be warranted in this instance. The attached notice, which clearly shows the amount of disputed assessment (\$360,810) as well as the personalty tax due thereon, was manifestly received by TCI's agent sometime in August, 2004 – well before the expiration of the 60-day appeal period. Thus, even assuming that TCI did not actually receive its copy of the certification itself until after the deadline, the company was effectively put on notice as to the current assessment of the subject property in plenty of time to perfect an appeal. Moreover, by Ms. Racca's own written admission, she had misapprehended the date from which the appeal period began to run. While certainly unfortunate, that ignorance of the applicable law would obviously not have constituted sufficient cause for an extension of the deadline.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 15th day of September, 2006.



PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Cesar Rod Monroy, V.P. Finance, Titan Concrete Industries, Inc.
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

TITAN2.DOC

ATTACHMENT TO INITIAL DECISION AND ORDER

Aug 25 04 03:20p

BOB PATTERSON, SHELBY COUNTY TRUSTEE

P.O. Box 2751

Memphis, TN 38101-2751



P. 2

For Online Payments & Tax Research

www.shelbycountytntreasurer.com

24 hours, 7 days a week

QUESTIONS? Call - (901) 521-1829

PARCEL #	TAXING AUTHORITY	REASON FOR NOTICE	TAX TYPE
001-7450-0-00000-0	Shelby County	2003 03-019001	Personalty
			6 of 152



CARRIER EXC & FOUNDATION CO
3860 FOREST HILL IRENE RD
STE 102
MEMPHIS TN 38125-2586

Lot Size

Lot No.

Classification:

Location: 3860 FOREST HILL IRENE RD #
Germantown 0

Subdivision:

PROPERTY TAX NOTICE

Year	Assessed Value	Tax Rate	Base Tax	Int & Pen	Court	Atty	Misc	Balance Due
2003	360810	4.09	6,198.80	0.00				\$6,198.80
IF PAID BY September 30, 2004 TOTAL AMOUNT DUE IS								\$6,198.80
CORRECTED NOTICE								
AVOID PAYING YOUR TAXES TWICE. Verify taxes online or check with your mortgage company before paying your taxes. Keep this tax notice for your records. (See reverse side for details)								

001-7450-0-00000-0
CARRIER EXC & FOUNDATION CO
3860 FOREST HILL IRENE RD
STE 102
MEMPHIS TN 38125-2586

Enter address change here:

Name: _____

Address: _____

City: _____ State: _____

Zip: _____ Phone: _____

Changes require signatures of all owners

Signature: _____

Signature: _____

Mail bottom portion with your payment

Due Date: September 30, 2004

WAD07/19/2004

ENTER AMOUNT PAID

NOTICE: Personal checks submitted for payment may be converted to electronic transactions.

Make check or money order payable to:

BOB PATTERSON, TRUSTEE
P.O. Box 2751
Memphis, TN 38101-2751

DO NOT WRITE BELOW THIS LINE

DO NOT FOLD, STAPLE OR TAPE

00174500 000000 2003 S 00000000 0000619880 0